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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SALVADOR FLORES,

Plaintiff and Appellant,

v.

SOLEIMAN SAYANI AND
ROXANNA D. KHAYAT,

Defendants and Respondents.

B290995

Los Angeles County
Super. Ct. No. BC636814

APPEAL from a judgment of the Superior Court of Los Angeles County, Yolanda Orozco, Judge. Affirmed.

Law offices of Mark R. Schwartz for Plaintiff and Appellant Salvador Flores.

Raffalow, Bretoi, Lutz & Steele, R. Denyse Greer for Defendants and Respondents Soleiman Sayani and Roxanna D. Khayat.

INTRODUCTION AND FACTUAL AND PROCEDURAL BACKGROUND

On October 28, 2014, plaintiff and appellant Salvador Flores was driving his truck on Victory Boulevard when it was hit by a car. The car contained a woman named Nahid Sayani, and a younger woman, defendant and respondent Roxanna Khayat. At the accident scene, Sayani claimed she was driving, but Flores and another witness believed Khayat was the driver.

On October 11, 2016, Flores filed a complaint for negligence against “Sayani Soleiman” and Doe defendants 1 through 50 alleging personal injury and property damage. Although we have not been provided a copy, the parties apparently entered into a stipulation changing the name of the original defendant to Soleiman Sayani, who is the owner of the vehicle that hit Flores’ truck. Flores’ briefs indicate (without citation to the record) Nahid Sayani was at some point named as a defendant.¹ Flores’ briefs also indicate (again without citation to the record) that Nahid Sayani is Soleiman Sayani’s wife and the aunt of Roxanna Khayat.

Before filing the complaint, on February 26, 2015, Flores’ attorney wrote a letter to Mercury Insurance. In the letter, he identified Khayat by name, driver’s license number, and address. He stated Flores and another witness were “convinced” Khayat was driving when the accident occurred. Nevertheless, the complaint, which was filed over 19 months after the letter was written, did not name Khayat as a defendant.

¹ The case summary indicates an amendment to the complaint adding Nahid Sayani as Doe 6 was filed May 25, 2018. Nahid Sayani did not file a brief in this appeal.

The statute of limitations for the personal injury claim expired on October 28, 2016. (Code Civ. Proc., § 335.1.)² On August 18, 2017, Flores filed an Amendment to Complaint, alleging Doe 11 was the fictitious name for Khayat, and served her with a copy of the summons and complaint. Khayat specially appeared and filed a motion to quash, arguing the amendment was improper because (1) Flores knew Khayat’s identity when the original complaint was filed; (2) his lawyer expressed in writing a belief that Khayat was the driver prior to filing the complaint; and (3) the statute of limitations had expired. The trial court granted Khayat’s motion. We affirm.

DISCUSSION

“Section 474 allows a plaintiff who is ignorant of a defendant’s identity to designate the defendant in the complaint by a fictitious name (typically, as a ‘Doe’), and to amend the pleading to state the defendant’s true name when the plaintiff subsequently discovers it.” (*McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 371.)³ “When a defendant is properly named under section 474, the amendment relates back to the filing date of the original complaint.” (*Ibid.*, internal citation omitted.) “Section 474 provides a method for adding defendants after the statute of limitations has expired,

² All further undesignated statutory references are to the Code of Civil Procedure.

³ Section 474 provides: “When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, ... and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly”

but this procedure is available only when the plaintiff is actually ignorant of the facts establishing a cause of action against the party to be substituted for a Doe defendant.” (*Id.* at pp. 371-372.) “The question is whether [the plaintiff] knew or reasonably should have known that he had a cause of action against [the defendant].” (*Id.* at p. 372, internal citation and quotation marks omitted.)

The February 26, 2015 letter is substantial evidence Flores knew Khayat’s name when he filed the original complaint. It also is substantial evidence he believed she was the driver, and thus knew or reasonably should have known he had a cause of action against her. Flores also stated in his deposition he believed the younger woman was the driver because he was looking at her immediately before the crash occurred. Yet, he did not name her in his complaint and waited until after the statute of limitations for a personal injury claim had run before seeking to add her as a Doe defendant. Under these circumstances, the trial court correctly granted Khayat’s motion to quash.

Flores contends reversal is required because the trial court’s order contained a typographical or transcription error. The trial judge’s written order quotes from *Hazel v. Hewlett* (1988) 201 Cal.App.3d 1458, 1464, as follows: “The phrase ‘when the plaintiff is ignorant of the name of a defendant’ . . . has not been interpreted liberally.” The court in *Hazel* actually used the word “literally” rather than “liberally.”

Plainly, this typographical or transcription error does not warrant reversal. We review the trial court’s factual findings for substantial evidence, and its legal conclusions *de novo*. (*Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1169.) Notwithstanding the misquotation, the trial court used the correct legal standard,

applied sound legal reasoning, and reached the correct conclusion.

Finally, we observe Flores alleged the car accident resulted in both personal injury and property damage. The parties did not raise in the trial court or on appeal whether Flores should be allowed to pursue his property damage claim against Khayat because a longer statute of limitations period applies. (See § 338, subd. (c)(1).) We conclude the issue is forfeited. (*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 451-452.)

DISPOSITION

The judgment is affirmed. Khayat is awarded her costs on appeal.

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CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.